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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

MAR 31 2005
Date:

IN RE: Applicant: [REDACTED]

PETITION: Application for Status as a Temporary Resident pursuant to Section 210 of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center, remanded by the Legalization Appeals Unit (LAU), now the Administrative Appeals Office (AAO), reopened and again denied by the Director, Western Service Center. The matter is now before the AAO on appeal. The appeal will be dismissed

In both decisions of denial, the director denied the application because the applicant failed to establish the performance of at least 90 man-days of qualifying agricultural employment during the eligibility period. The decisions were based on evidence adverse to the applicant's claim of employment for [REDACTED]

On appeal from the initial denial, the applicant reaffirms his claim to eligibility and submitted evidence of additional employment.

In response to the final denial, the applicant reaffirmed his claim to eligibility, stating that he had ALREADY submitted documentation attesting to his employment. The applicant submitted three separate affidavits from [REDACTED]

In order to be eligible for temporary resident status as a special agricultural worker, an alien must have engaged in qualifying agricultural employment for at least 90 man-days during the twelve-month period ending May 1, 1986, and must be otherwise admissible under section 210(c) of the Act and not ineligible under 8 C.F.R. 210.3(d). 8 C.F.R. 210.3(a). An applicant has the burden of proving the above by a preponderance of the evidence. 8 C.F.R. 210.3(b).

On the Form I-700 application, the applicant claimed 103 man-days of qualifying agricultural employment for [REDACTED] in Santa Maria County, California from May 6, 1985 to December 17, 1985.

In support of the claimed agricultural employment, the applicant submitted a corresponding Form I-705 affidavit and a separate employment letter, both purportedly signed by Frank Vega.

In attempting to verify the applicant's claimed employment, the Service acquired information which contradicted the applicant's claim. On July 30, 1989, [REDACTED] stated in a letter to the Service that he had never been a farm labor contractor, but rather was a sharecropper, foreman, and supervisor at various farms in the Santa Maria Valley in Southern California. [REDACTED] stated that his signature had been falsified on employment documents, and submitted to the Service a list of 267 names belonging to the individuals who had actually worked for him or with him. The applicant is not named on this list. [REDACTED] also informed the Service that he worked during the qualifying period only from May 6, 1985 to December 17, 1985.

On December 12, 1991, the applicant was advised in writing of the adverse information obtained by the Service, and of the Service's intent to deny the application. The applicant was granted thirty days to respond. In response, the applicant submitted a letter in which he stated that one of his co-workers obtained his employment documents for him. The applicant stated that he was not sure of the name of the individual for whom he worked. The applicant further stated that it was now impossible to get additional proof from the ranchers regarding his employment.

The director concluded the applicant had not overcome the derogatory evidence, and denied the application on January 31, 1992. In denying the application, the director failed to consider the applicant's response to the notice of intent to deny and, on January 29, 2001, the LAU remanded the case for consideration of all the evidence submitted throughout the application process.

On appeal from the initial decision, the applicant stated that he did not get his employment letter from [REDACTED] but that he did get it from the ranch where he worked. The applicant stated that his name was probably on the list under the [REDACTED]. The applicant stated that he was submitting an affidavit from a co-worker as proof of his agricultural and landscaping employment. The applicant submitted an employment affidavit from Jose Lomeli, who stated that the applicant worked for CCN Wholesale Nursery & Landscaping in Bakersfield, California for one month in January 1986 and that he worked for Landscape Growers in Monterey Park, California for five months in 1986. The affiant stated that he and the applicant worked on ranches (unnamed) and that they were paid in cash.

Subsequently, the application was reopened to consider all of the evidence and, on November 16, 2004, the director again denied the application.

In response to the final denial, the applicant reaffirmed his claim to eligibility stating that he had submitted documentation attesting to his employment. The applicant stated that other people own the ranches now and know nothing of his former employment and that the only other proof he has of his employment are the attestations of those who have known him since he came to the United States. The applicant submitted three separate, almost identical in content, affidavits from [REDACTED], all of whom state that they have known the applicant since he was a child, that the applicant has been in the United States since March 1985 and that during some portions of 1985 and 1986, the applicant worked in the fields.

Generally, the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility, and amenability to verification. 8 C.F.R. 210.3(b)(1). Evidence submitted by an applicant will have its sufficiency judged according to its probative value and credibility. 8 C.F.R. 210.3(b)(2). Personal testimony by an applicant which is not corroborated, in whole or in part, by other credible evidence (including testimony by persons other than the applicant) will not serve to meet an applicant's burden of proof. 8 C.F.R. 210.3(b)(3).

There is no mandatory type of documentation required with respect to the applicant's burden of proof; however, the documentation must be credible. All documents submitted must have an appearance of reliability, i.e., if the documents appear to have been forged, or otherwise deceitfully created or obtained, the documents are not credible. United Farm Workers (AFL-CIO) v. INS, Civil No. S-87-1064-JFM (E.D. Cal.).

While the letter from [REDACTED] attests to the applicant's having worked on ranches and in landscaping, the affiant does not attest to the number of man-days the applicant purportedly worked, nor does he indicate the type of work performed by the applicant. Therefore, the letter does not attest to the applicant's having performed any qualifying employment. Further, an applicant raises serious questions of credibility when asserting an entirely new claim to eligibility on appeal. In such instances, the Service may require credible evidence to support the new claim as well as a complete plausible explanation concerning the applicant's failure to advance this claim initially. The instructions to the application do not encourage an applicant to limit his claim; rather they encourage the applicant to list multiple claims as they instruct him to show the most recent employment first.

The applicant's claim to have been employed by CCN Wholesale Nursery & Landscaping and Landscape Growers was first brought to the Service's attention at the appellate level. The very purpose of the Form I-700 application is to allow the applicant to claim the qualifying agricultural employment which entitles him to the benefits of status as a special agricultural worker. The applicant, in affixing his signature on line 32 of his application, certified that the information he provided was true and correct. At the time of filing, the applicant did not even reference this employment on the Form I-700 application, nor did he submit corroborating materials to document the alleged employment with CNN Wholesale Nursery & Landscaping, or Landscape Growers.

Larger issues of credibility arise when an applicant claims employment which is called into question through Service investigation, and later attempts to establish eligibility with a different employer, heretofore never mentioned to the Service. The applicant's advancement of a new employment claim does not address, resolve, or diminish the credibility issues raised by the adverse evidence as regards the applicant's initial claim.

The applicant claims that he did not know the name of his employer and that a co-worker got his employment documents for him. That documentation purported employment by the applicant for [REDACTED]. However, the applicant is not named on the list of employees provided by [REDACTED]. The name [REDACTED] is not on the list of employees who worked for [REDACTED] either. The applicant has not overcome this adverse evidence, which directly contradicts the applicant's claim. Therefore, the documentary evidence submitted by the applicant cannot be considered as having any probative value or evidentiary weight.

The applicant has failed to credibly establish the performance of at least 90 man-days of qualifying agricultural employment during the twelve-month statutory period ending May 1, 1986. Consequently, the applicant is ineligible for adjustment to temporary resident status as a special agricultural worker.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.